

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

ILLINOIS COMMERCE COMMISSION

On its own Motion,

-VS-

No. 13-0589

COMMONWEALTH EDISON COMPANY

Investigation into customer
Refunds for payments made under
invalidated riders

Chicago, Illinois

August 12, 2014

Met pursuant to notice at 1:30 P.m.

BEFORE:

CLAUDIA E. SAINOT, Administrative Law Judge.

APPEARANCES :

ROONEY RIPPKE & RATNASWAMY LLP, by
MR. JOHN P. RATNASWAMY
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Appearing on behalf of
Commonwealth Edison Company;

1 OFFICE OF THE ATTORNEY GENERAL,
PUBLIC UTILITIES BOARD, by
2 MS. KAREN L. LUSSON
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7 Appearing on behalf of the People
of the State of Illinois;

8

ILLINOIS COMMERCE COMMISSION, by
9 MR. JOHN C. FEELEY
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13 Appearing on behalf of the Staff
of the Illinois Commerce
14 Commission;

15 CITIZENS UTILITY BOARD, by
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19 Appearing on behalf of the
Citizens Utility Board.

20 ALSO PRESENT:
Eugene Bernstein, Exelon Business Services Company
21

22 SULLIVAN REPORTING COMPANY, by
Brad Benjamin, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
NONE					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
NONE SO MARKED		
OR ADMITTED.		

1 JUDGE SAINSOT: By the authority vested in me
2 by the Illinois Commerce Commission I now call
3 Docket No. 13-0589. It is the matter of the Illinois
4 Commerce Commission on its own Motion versus
5 Commonwealth Edison Company. And it is an
6 investigation into customer refunds for payments made
7 under invalidated riders.

8 Will the parties identify themselves
9 for the record, please.

10 MR. RATNASWAMY: On behalf of Commonwealth
11 Edison Company, John Ratnaswamy, R-A-T-N-A-S-W-A-M-Y,
12 from Rooney Rippie, R-I-P-P-I-E, and
13 Ratnaswamy, LLP, 350 West Hubbard Street, Suite 600,
14 Chicago, Illinois 60654.

15 MS. LUSSON: On behalf of the People of the
16 State of Illinois, Karen Lusson and Sameer Doshi and
17 Janice Dale, 100 West Randolph Street, 11th Floor,
18 Chicago, Illinois 60601.

19 MR. FEELEY: Representing the Staff of the
20 Illinois Commerce Commission, John Feeley and Jessica
21 Cardoni, the Office of General Counsel, 160 North
22 LaSalle Street, Suite C-800, Chicago, Illinois 60601.

1 MS. SODERNA: On behalf of the Citizens Utility
2 Board, Julie Soderna, 309 West Washington, Suite 800,
3 Chicago, Illinois 60606.

4 JUDGE SAINSOT: Okay. This is a pretrial
5 hearing. I understand that the parties have resolved
6 their differences albeit not all signed and ready to
7 go yet.

8 So the hearing that is scheduled for
9 10:00 a.m. on this Thursday will not be an
10 evidentiary hearing per se, it will be a hearing to
11 establish the basis of the settlement. When I say
12 it's not going to be an evidentiary hearing, what I
13 mean is there aren't any contested issues really to
14 try. We're taking evidence for the purpose of
15 establishing that there are no contested issues,
16 which is different than an evidentiary hearing.

17 So, that being said, would someone
18 like to explain where we are and what's going to
19 happen.

20 MS. LUSSON: Sure, your Honor.

21 So we -- and when I say "we," I mean
22 the parties, ComEd, the Attorney General's Office,

1 the Citizens Utility Board, and with Staff's
2 concurrence, are in the process of finalizing and
3 getting the necessary signatures on a Memorandum of
4 Agreement, what we're terming an MOA --

5 JUDGE SAINSOT: Uh-huh.

6 MS. LUSSON: -- that we believe will resolve
7 all issues in the Docket. And under the
8 agreement -- or MOA, ComEd will refund to its
9 customers the amount \$9.5 million plus interest to
10 resolve all issues in the 13-0589 Docket. And that
11 figure we believe, is supported by the evidentiary
12 record.

13 It includes all amounts collected from
14 customers under Rider AMP with the exclusion of
15 amounts credited and foregone revenues in the 12-0321
16 and 13-031 Formula Rate Dockets.

17 The evidentiary basis for that
18 specifically can be found in Mr. Free's (phonetic)
19 rebuttal testimony as a refund amount that would
20 occur if those revenues are subtracted from the total
21 4.6 million that was collected under Rider AMP --

22 MR. BERNSTEIN: 14.6.

1 MS. LUSSON: 14 -- is that what I said?

2 MR. BERNSTEIN: You said "4.6."

3 MS. LUSSON: 14.6 collected under the Rider.

4 In addition, the terms of the MOA
5 impact a few other pending Dockets in one existing
6 Commission Order. But specifically under the
7 Agreement, ComEd agrees to refund in a single month
8 the \$36.7 million refund plus interest that the
9 Commission has already ordered ComEd to refund to
10 customers over an eight month period in its
11 February 23rd, 2012 decision in Docket 07-0566 on
12 Remand.

13 And that was the case that involved
14 the Remand of the Second District Appellate Court's
15 decision in ComEd Versus ICC, the September 30th,
16 2010 opinion --

17 JUDGE SAINSOT: So is this 36.7 million
18 something that's already been ordered?

19 MS. LUSSON: Yes. Yes.

20 And it's related to the Court's
21 reversal initially in that September 30th, 2010
22 decision of the Commission's failure to recognize in

1 customer rates the accumulated depreciation of
2 existing or embedded plant during the Pro Forma test
3 period.

4 JUDGE SAINSOT: That case is still going on?

5 MS. LUSSEN: Well, it was resolved back in
6 February of 2012. But if -- you may recall that the
7 Commission, as a part of that Order, entered a stay
8 within its Order pending ComEd's appeal because ComEd
9 indicated in the case they were going to appeal the
10 decision.

11 And so the Second District Appellate
12 Court affirmed the Commission's decision, sent the
13 mandate back to the Commission and it's essentially
14 been on hold in that Docket. And, again, that
15 Order -- the Original Commission Order, called for an
16 eight-month refund period.

17 So by the terms of this new MOA in
18 this Docket, ComEd has agreed to accelerate that
19 refund from an eight-month period to a one-month
20 period. And that refund would come along with -- and
21 be refunded to customers in the month of November
22 along with the \$9.5 million refund in this Docket.

1 JUDGE SAINSON: And these are, I am assuming,
2 in the form of bill credits.

3 MS. LUSSON: That's right. And under the terms
4 of the MOA, the \$9 and a half million refund would be
5 a per-customer credit because that's how it was
6 collected under Rider AMP, A-M-P. And the 07-0566
7 portion of the refund, the 36.7 million, will be on a
8 per-kilowatt-hour-basis refund because that's how it
9 was also collected initially. So those will be two
10 separate line items, but both appearing in the month
11 of November.

12 In -- yes. As Counsel for CUB just
13 pointed out, the per-kilowatt hour refund for that
14 36.7 million was precisely the methodology that the
15 Commission approved in that Order as well --

16 JUDGE SAINSON: Okay.

17 MS. LUSSON: So that isn't changing it. It's
18 just the acceleration period of the refund.

19 So given those proposed changes to the
20 existing Order in the 07-0566 Remand Docket, ComEd
21 will be filing a motion to amend that Order on Remand
22 and for leave to file testimony -- I believe the

1 testimony of Mr. Free that explains this refund
2 methodology change. And all parties to that Docket
3 who aren't necessarily in this Docket will have an
4 opportunity to weigh in, make sure they're
5 comfortable with that refund methodology acceleration
6 and the calculation that would deliver the refund in
7 the month of November.

8 Now, we're in the process of
9 contacting those parties in that Docket informally
10 and letting them know of this so this will not come
11 as a surprise to them. And we're hoping for and have
12 every reason to believe that there will not be
13 objections on that point. And so there won't -- know
14 that that will be agreed to as well.

15 JUDGE SAINSOT: Is there interest that's
16 included in this 36.7 million?

17 MS. LUSSON: Yes. I should mention that both
18 the 9 and a half million amount and the 36.7 million
19 are plus interest.

20 JUDGE SAINSOT: Now, here's another thing
21 because -- and this is just more in the nature of a
22 Murphy's Law question.

1 Are these two refunds interdependent.

2 MS. LUSSON: I'm not sure I'm understanding

3 your question.

4 MR. RATNASWAMY: Could I suggest something on

5 that?

6 JUDGE SAINSOT: Sure.

7 MR. RATNASWAMY: The document we're working on

8 assumes the Commission actually approves all this,

9 which they would have to do in all multiple Dockets.

10 So in that sense, yes, they're

11 interdependent because if the Commission

12 hypothetically approved one and rejected one, we'd

13 have to figure out what we would do.

14 JUDGE SAINSOT: So I probably will have to wait

15 before entering a final order in this case until

16 07-0566 is resolved.

17 MR. RATNASWAMY: Right. I think one of the

18 things we would discuss with you on Thursday is our

19 sort of plan for the filings so that it all syncs up.

20 JUDGE SAINSOT: Yeah. And don't get me wrong,

21 I don't think the Commission is going to have a

22 problem with an accelerated refund. But, you know,

1 that's how lawyers think; what if.

2 MS. LUSSON: Right. And we've tried to
3 anticipate that as well, your Honor. And the MOA
4 does, as John said, anticipate that and suggests that
5 the parties would regroup if something falls apart.

6 JUDGE SAINSOT: Good.

7 That was just something that I could
8 see like in a nightmare.

9 MS. LUSSON: Right. Right.

10 MR. RATNASWAMY: The timing we're proposing is
11 such that -- the time for people to file for
12 rehearing or Complaints should be over and the
13 Commission should have handled it so we can all be
14 confident that at the time of the refund that there
15 is nothing left to worry about.

16 JUDGE SAINSOT: Okay.

17 MS. LUSSON: So, again, we would be filing that
18 Motion very quickly in 07-0566 so that we're sort of
19 on the same timetable if not -- you know, so you have
20 the assurance that, in fact, this is all happening.

21 And we would submit a Joint Draft
22 Proposed Order, not only in this Docket later this

1 week after the close of the evidentiary hearing, but
2 also in the 07-0566 Docket once that Motion has been
3 filed.

4 And then, finally, also impacted by
5 this agreement are the pending Rider AMP
6 Reconciliation Dockets, and there are three of them.
7 And those Dockets are 11-0459, 12-0371, and 13-0377.
8 And ComEd will be filing an Unopposed Motion to
9 Dismiss those Dockets because the refund agreed to in
10 the MOA includes any reconciliation amount that were
11 specified in ComEd's tariffs in those Dockets.

12 JUDGE SAINSOT: So they can moot out?

13 MS. LUSSEN: Exactly. They become moot.

14 JUDGE SAINSOT: Okay.

15 MS. LUSSEN: And, then, in terms of the
16 Evidentiary Hearing or what we're -- we are or are
17 not calling the Evidentiary Hearing on Thursday, we
18 would propose to file -- in addition to all of the
19 direct and rebuttal testimony that's been filed
20 today, along with the necessary affidavits, we would
21 also like to file as a piece of evidence in this
22 Docket a stipulation and the Joint MOA in the

1 Memorandum of Agreement and enter them into evidence
2 with all of the other documents in the record.

3 JUDGE SAINSOT: Okay. Sounds like you really
4 thought this plan through.

5 MS. LUSSON: We tried.

6 JUDGE SAINSOT: Yeah. I mean, it's not so
7 simple. I mean, it's what, five cases?

8 MS. LUSSON: Uh-huh.

9 MR. RATNASWAMY: Could I ask --

10 JUDGE SAINSOT: Sure.

11 MR. RATNASWAMY: -- just two detailed questions,
12 please?

13 JUDGE SAINSOT: Sure. Of course.

14 MR. RATNASWAMY: I just don't remember your
15 practice, honestly.

16 If we file an affidavit for Mr. Free,
17 for example, supporting his existing testimony, do
18 you want his existing testimony attached or is just
19 the affidavit by itself fine?

20 JUDGE SAINSOT: We probably should have the
21 testimony attached. I mean, it's not a lot of
22 testimony in this case.

1 MR. RATNASWAMY: Okay. And then the other
2 thing is for the stipulation.

3 If the counsel for all the parties
4 sign it, does it also need a verification or is just
5 stipulating it sufficient?

6 JUDGE SAINSOT: I don't see why you need a
7 verification.

8 MR. RATNASWAMY: Okay. Good. Thank you.

9 JUDGE SAINSOT: I mean, you lawyers
10 signing -- you know, there's got to be some benefits
11 to seven years of college.

12 MS. LUSSON: And then, again, just to finalize
13 the process we would present to you a Joint Draft
14 Proposed Order that we are working on as we speak --

15 JUDGE SAINSOT: Oh, beautiful.

16 MS. LUSSON: Yeah. And then we would submit to
17 you for your review.

18 And similarly, we would do the same in
19 the 07-0566 Order to sort of help that -- move that
20 Docket along as well.

21 JUDGE SAINSOT: Okay. Well, as memory serves
22 me, that was Judge Hilliard and Judge Haynes?

1 MS. LUSSON: Correct. Yes.

2 JUDGE SAINSOT: I'll tell them the good news.

3 MS. LUSSON: I believe Judge Haynes just
4 handled the Remand part of it but I could be wrong.
5 So...

6 JUDGE SAINSOT: So wasn't that like seven years
7 old?

8 MS. LUSSON: The actual Remand Order was
9 February 23rd, 2012.

10 MS. DALE: That was the second Remand Order.

11 MR. BERNSTEIN: 2007 Docket. So is it seven
12 years ago?

13 MS. LUSSON: Right. 07-0566.

14 JUDGE SAINSOT: Some take longer to resolve
15 than others.

16 Okay. So that's the plan. Are we all
17 set that 10:00 o'clock Thursday we're meeting here?

18 Okay. So that's good. Well, thanks
19 for briefing me. I can see that this is really an
20 involved matter so -- but I think I understand it
21 pretty well. So good job on that one. Sometimes
22 it's not so easy to explain these things.

1 Okay. Well, have a nice afternoon,
2 everybody.
3 (Whereupon the hearing was
4 continued to August 14, 2014,.
5 At 10:00 a.m.)
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